

**NICOLETTI HORNIG & SWEENEY**

Attorneys for  
*Robert Membeno, Trustee for SAI Trust*  
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NH&S File No.: 00000840LCG

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

In re:	)	CHAPTER 11
	)	
CALPINE CORPORATION, et al,	)	Case No. 05-60200 (BRL)
	)	Jointly Administered
	)	
Debtor.	)	
	)	

**NOTICE OF MOTION**

PLEASE TAKE NOTICE, that upon the accompanying Rule 56.1 Statement, memorandum of law and Declaration of Robert Membreno dated August 12, 2008 and exhibits annexed thereto, and all prior proceedings had herein, the undersigned will move this Court on September 17, 2008 or as soon as counsel may be heard before the Honorable Burton R. Lifland, at the United States Courthouse, One Bowling Green, New York, New York, for an Order pursuant to Federal Rule of Civil Procedure 56 granting summary judgment in favor of SAI Trust against Debtors. SAI Trust seeks an order, judgment and decree holding that:

- A. Debtors are liable to SAI Trust;
- B. Debtors breached its contract with SAI Trust;

C. Declaratory relief that the contract between SAI Trust and Debtors does not permit the inclusion of allocated expenses from multiple power in monthly Net Profits Interest;

D. Declaratory relief that the contract between SAI Trust and Debtors does not permit the inclusion of 15% of allocated expenses to be added as overhead;

E. Interest at the rate of 9% for all monthly NPI's where allocated expenses were improperly inserted from the date of the breach of contract through August 1, 2008 and going forward for any further breaches;

F. Interest at the rate of 9% for each instance where 15% of allocated expenses was added to overhead from the date of the breach of contract through August 1, 2008 and going forward for any further breaches;

G. SAI Trust is entitled to recover damages in the amount of \$583,698.61, plus interest and costs;

H. SAI Trust is entitled to such other and further relief as the Court deems just and proper.

Dated: New York, New York  
August 13, 2008

Yours, etc.,

**NICOLETTI HORNIG & SWEENEY**

Attorneys for

*Robert Membeno, Trustee for SAI Trust*

By: 

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